

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 04-CV-12253MLW

<b>STEVEN MCDERMOTT and</b>	)
<b>STACEY MCDERMOTT,</b>	)
<b>Plaintiffs,</b>	)
	)
<b>v.</b>	)
	)
<b>FEDEX GROUND PACKAGE SYSTEMS, INC.)</b>	)
<b>T.S. PRUITT, ALLEGIANCE HEALTHCARE, )</b>	)
<b>INC., D. PONCE, E.W. WYLIE )</b>	)
<b>CORPORATION, D.W. SMITH, )</b>	)
<b>ARSENBERGER TRUCKING, INC., )</b>	)
<b>J.T. FOSBRINK, RYDER TRUCK RENTAL, )</b>	)
<b>LORRAINE ODZANA as )</b>	)
<b>ADMINISTRATRIX OF THE ESTATE OF )</b>	)
<b>JAMES J. ODZANA, SHORELINE )</b>	)
<b>TRANSPORTATION, INC. JACYLYN )</b>	)
<b>PALETTA as ADMINISTRATRIX OF THE )</b>	)
<b>ESTATE OF MARIO J. CASTRO, )</b>	)
<b>Defendants.</b>	)

**DEFENDANT DAMIAN PONCE’S MOTION TO DISMISS  
FOR LACK OF SERVICE AND PERSONAL JURISDICTION**

The defendant Damian Ponce (“Ponce”) hereby moves pursuant to Rules 4(m) and 12(b)(2) of the Federal Rules of Civil Procedure that all claims and cross-claims against him be dismissed on the grounds that the plaintiffs have failed to make service upon him and the Court lacks personal jurisdiction over him.

In support of his motion, Ponce relies on his memorandum of law and the affidavit of Kent Howell, both of which are filed herewith.

Respectfully submitted,  
Defendant  
DAMIAN PONCE  
By his attorneys,

/s/ Michael D. Riseberg  
John F.X. Lawler, BBO #546910  
Michael D. Riseberg, BBO #567771  
Erica B. Mecler, BBO #664709 (Pending  
Admission)  
**ADLER POLLOCK & SHEEHAN P.C.**  
175 Federal Street  
Boston, MA 02110  
(617) 482-0600

Dated: May 25, 2007

**CERTIFICATE OF RULE 7.1 CONFERENCE AND OF SERVICE**

The undersigned hereby certifies that prior to filing the above motion he conferred with plaintiffs' counsel concerning its subject matter in a good faith attempt to resolve or narrow the issues presented. The undersigned further certifies that on **May 25, 2007** this document is being filed through the ECF system and, accordingly, is being sent electronically to the registered participants as identified on the Notice of Electronic Filing and a paper copy will be sent to any party indicated as a non registered participant.

/s/ Michael D. Riseberg  
Michael D. Riseberg, BBO #567771